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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MICHAEL DENTON,

11 Plaintiff,

12 v.

13 PASTOR, et al.,

Defendants.

CASE NO. 3:16-CV-05314-RJB-DWC

ORDER

14 The District Court has referred this action, filed pursuant to 42 U.S.C. §1983, to United
15 States Magistrate Judge David W. Christel. Plaintiff Michael Denton has filed an “Emergency
16 Motion for an Evidentiary Hearing,” “Motion for Evidentiary Hearing,” and “Motion to Review
17 Jail Conditions” (“Motions for Hearing), and Defendants have filed a Motion to Consolidate
18 Pursuant to Civil Rule 42 (“Motion to Consolidate”). Dkt. 104, 108, 111, 121. After review of
19 the relevant record, the Court denies Plaintiff’s Motions for Hearing (Dkt. 104, 108, 121) and
20 denies Defendants’ Motion to Consolidate (Dkt. 111).

21 **I. Motions for Hearing (Dkt. 104, 108, 121)**

22 In the Motions for Hearing, Plaintiff requests the Court set hearings on his requests for
23 injunctive relief and to determine whether the Pierce County Jail is violating his rights. Plaintiff
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1 moved for injunctive relief when Defendants allegedly confiscated Plaintiff's legal materials
2 when he was temporarily transferred to Western State Hospital for a mental evaluation. *See* Dkt.
3 106, 109. The Court has reviewed Plaintiff's requests for injunctive relief and finds the requests
4 are mooted by his transfer to a different facility. As Plaintiff's requests for injunctive relief are
5 moot, the Court finds his requests for a hearing on his motions for injunctive relief are moot.
6 Further, Plaintiff's request for a hearing to determine if the conditions at Pierce County Jail are
7 constitutional are at issue in this lawsuit. *See* Dkt. 121. There are currently no dispositive
8 motions pending in this action and the Court finds Plaintiff's request for a hearing regarding his
9 conditions at Pierce County Jail unnecessary at this time. Accordingly, Plaintiff's Motions for
10 Hearing (Dkt. 104, 108) are denied.

11 **II. Motion to Consolidate (Dkt. 111)**

12 Defendants move to consolidate this action with a separate action filed by Plaintiff on
13 February 2, 2017. *See* Dkt. 111, *Denton v. Pastor, et al.*, Case No. 3:17-cv-5075-BHS-TLF
14 (W.D. Wash.). Plaintiff filed a Response stating he opposes consolidation of the two cases. Dkt.
15 124.

16 "If actions before the court involve a common question of law or fact, the court may: (1)
17 join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or
18 (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a). Under Rule
19 42, the Court has "broad discretion" to consolidate cases pending in the same district either upon
20 motion by a party or *sua sponte*. *In re Adams Apple, Inc.* 829 F.2d 1484, 1487 (9th Cir. 1987).
21 In exercising this discretion, the Court "weighs the saving of time and effort consolidation would
22 produce against any inconvenience, delay, or expense that it would cause." *Huene v. United*
23 *States*, 743 F.2d 703, 704 (9th Cir. 1984).

1 Plaintiff is proceeding *pro se* and *in forma pauperis* in two separate civil actions, both
2 filed pursuant to 42 U.S.C. § 1983 and alleging violations of his civil rights. *Denton v. Pastor*, et
3 al., Case No. 3:16-cv-5314-RJB-DWC (“*Denton I*”); *Denton v. Pastor, et al.*, Case No. 3:17-cv-
4 5075-BHS-TLF (“*Denton II*”). The instant action, *Denton I*, was filed on April 28, 2016. *Denton*
5 *I* at Dkt. 1. Plaintiff is challenging his conditions of confinement while housed at Pierce County
6 Jail. *Id.* at Dkt. 99. Specifically, Plaintiff alleges Defendants Lieutenant Charla James-
7 Hutchinson and Sergeant Caruso denied Plaintiff due process when they revoked his good time
8 credits and Defendants Pastor and Spencer created a policy which denied Plaintiff access to
9 publications. *Id.* The Court has ruled on a motion to dismiss, dismissing several defendants and
10 claims, and issued a pretrial scheduling order. *See* Dkt. 41, 44, 49, 100. Discovery was
11 completed on August 28, 2017 and dispositive motions are due on or before September 27, 2017.
12 Dkt. 100.

13 Plaintiff filed his second action, *Denton II*, on February 2, 2017. *Denton II* at Dkt. 1. In
14 *Denton II*, Plaintiff alleges claims against Defendants Pastor, Spencer, James-Hutchinson,
15 Caruso, Jackson, White, Lee, Shannah, Jones, Davis, Balderrama, Smith, Alexander, and Pero.
16 *See id.* at Dkt. 11. Plaintiff alleges Defendants violated his constitutional rights when they: used
17 excessive force against Plaintiff, failed to protect Plaintiff, retaliated against Plaintiff, denied
18 Plaintiff access to his legal mail, and acted with deliberate indifference to Plaintiff’s serious
19 medical needs. *See id.* A motion to dismiss has been filed, but neither an answer nor pretrial
20 scheduling order has been filed in *Denton II*. Discovery has not begun.

21 While the two cases require application of § 1983 law, they do not involve the same set
22 of facts or legal issues and *Denton II* names 10 additional defendants. Moreover, the cases are at
23 different procedural postures. In *Denton I*, discovery has been completed and the Court is
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1 awaiting dispositive motions and, in *Denton II*, an answer has not been filed and discovery has
2 not begun. If the Court were to consolidate the two cases, resolution of *Denton I* would be
3 delayed considerably because the Court would require Plaintiff to file an amended complaint and
4 litigation for both cases would be essential restarted. The Court finds the inconvenience and
5 delay that will be caused by consolidation outweighs any time and effort saved by consolidation.
6 Accordingly, Defendants' Motion (Dkt. 111) is denied.

7 Because Plaintiff has been filing documents which do not clearly indicate whether it
8 applies to *Denton I* or *Denton II*, the Court finds it appropriate to provide Plaintiff with the
9 following filing directions:

- 10 • On the top right side of each document submitted to the Court, Plaintiff must
11 clearly indicate the case number.
- 12 • Plaintiff cannot file the same document in both cases; therefore, each filing should
13 indicate only one case number on the top right side.
- 14 • As the two cases involve different facts and different defendants, Plaintiff must
15 only file documents which relate to the specific facts of the case in which the
16 document is filed.
- 17 • If any filing does not comply with these instructions, the Court will not consider
18 the filing.

19 The Clerk is directed to file this Order in *Denton II*, 3:17-cv-05075-BHS-TLF.

20 Dated this 1st day of September, 2017.

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23 David W. Christel
24 United States Magistrate Judge